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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,340	03/12/2004	Doug Wroblewski	0644-032407	6222

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EXAMINER

KENNY, DANIEL J

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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06/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/799,340	Applicant(s) WROBLEWSKI, DOUG	
	Examiner DANIEL KENNY	Art Unit 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4,6,8,9,13-15,17,19 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4,6,8,9,13-15,17,19 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

Claims 2-4, 6, 8, 9, 19, and 23 - are rejected under 35 U.S.C. 102(b) as being anticipated by Sondrup (6,269,495).

Sondrup discloses a drain comprising:

Claim 8 - a drain body (18, 20) defining a drain cavity (22);

a frame (14 and se) having a securable end (se) received by said drain body and an exposed end (ee), said frame being rotatable relative to said drain body for adjusting the position of said frame exposed end;

a clamp (16, 24) for fixing said securable end of said frame to said drain body;
and

a grate (12) received by said exposed end of said frame, wherein said drain body comprises a ledge (18a) having a sloped surface, said frame securable end slidably engaging said surface of said sloped surface of said ledge when said frame is rotated relative to said drain body;

wherein said clamp comprises a clamp body having a protrusion (p) for clamping said frame securable end between said protrusion and said drain body; and

wherein said clamp further comprises a fastener (16) extending (in a radial direction) beyond said frame securable end and said clamp body and being threaded into said drain body (col. 3, lines 23 and 24).

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Claim 9 - a drain body (18, 20) defining a drain cavity (22);

a frame (14 and se) having a securable end (se) received by said drain body and an exposed end (ee), said frame being rotatable relative to said drain body for adjusting the position of said frame exposed end;

a clamp (16, 24) for fixing said securable end of said frame to said drain body;
and

a grate (12) received by said exposed end of said frame, wherein said drain body comprises a ledge (18a) having a sloped surface, said frame securable end slidably engaging said surface of said sloped surface of said ledge when said frame is rotated relative to said drain body;

the clamp comprises a clamp body having a protrusion (p) for clamping said frame securable end to said drain body;

wherein said drain body comprises a fastener receiving member (18a) extending into said drain cavity whereby said clamp body protrusion is configured to clamp said frame securable end to said fastener receiving member.

Claims 19 and 23 – a drain comprising: a drain body defining a drain cavity;

a frame having a securable end received by said drain body and an exposed end, said frame being rotatable relative to said drain body for adjusting the position of said frame exposed end;

a clamp for fixing said securable end of said frame to said drain body; and a grate received by said exposed end of said frame, wherein said clamp comprises a

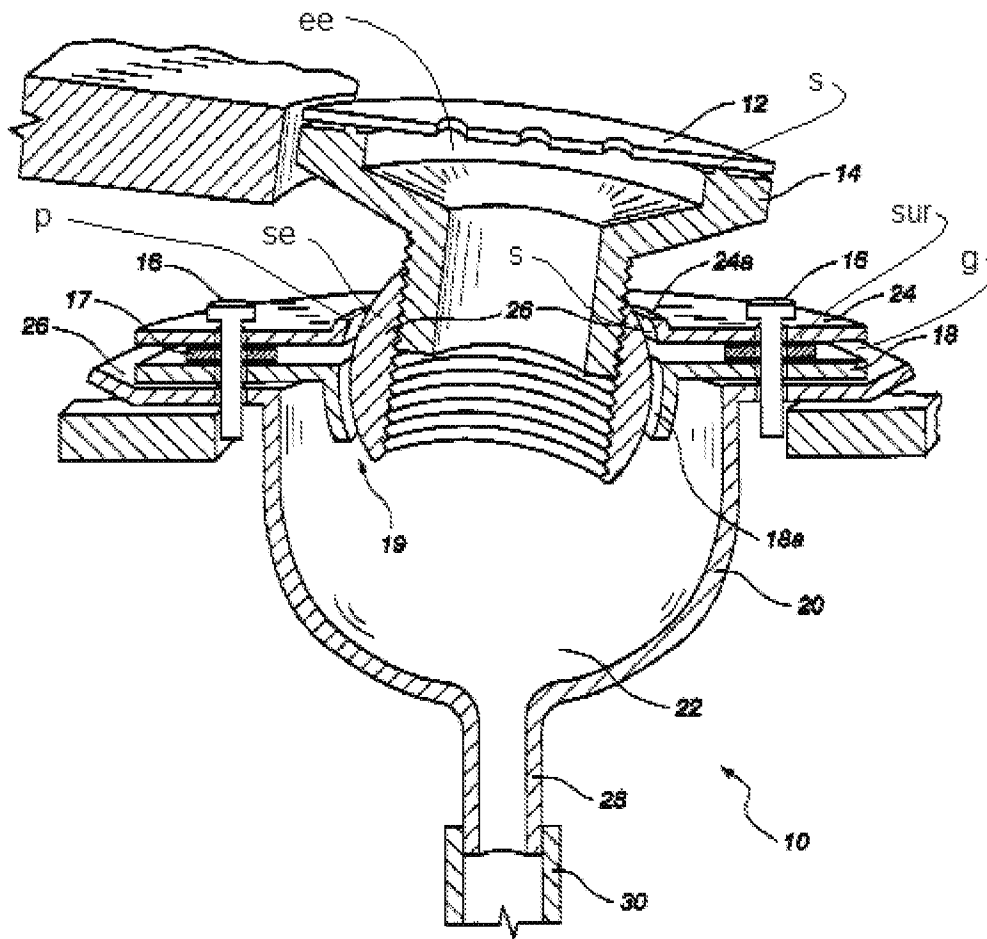
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clamp body having a protrusion for clamping said frame securable end between the protrusion and the drain body, and wherein said clamp body comprises a sloped drain body engaging surface (s) to provide a gap between a portion of said drain body engaging surface and said drain body.

Claims 2 and 21 – The frame securable end is circular.

Claims 3, 4, and 20 – The frame exposed end may have any shape (col. 4, lines 32 and 33).

Claim 6 – The frame exposed end comprises a seat (s), said grate being fixed to said seat.



Annotated Fig. 1 (U.S. Pat. 6,269,495)

Claim Rejections - 35 USC § 103

Claim 17 and 13-15 - are rejected under 35 U.S.C. 103(a) as being unpatentable over Sondrup. The claims are an obvious method of using the drain of Sondrup, such reference disclosing the clamping step comprising extending a fastener through the clamp body and beyond (in an axial direction) the securable end of the frame and threading the fastener into the drain body.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

The Sondrup drain may not look like the same as the one of the present invention. However, the two work in a similar manner. The exact terminology may not be the same, but (to use Applicant's terms) they both work by clamping and securing the end of a frame/grate between a clamp and a drain body. The significant structural difference is the frame lip. Applicant is encouraged to contact the Examiner to discuss amending the claims to recite this element.

Regarding the "between" amendment, this does not distinguish Sondrup from the claimed invention because the sole purpose of the clamp, and more specifically, the circular clamp protrusion, is to clamp the frame securable end between the protrusion and the broadly but reasonably defined drain body.

Regarding the ledge, it does meet the conventional meaning of "sloped", as it is, as a whole, inclined with respect to the horizontal. In fact, it would not appear to function to receive the frame securable end if it were not inclined.

Regarding any lack of clarity as to "where the Sondrup patent teaches the claimed feature of a sloped drain body engaging surface to provide a gap between a portion of the drain body engaging surface and the drain body.", the surface is marked "s" in the annotated drawing, and the gap marked "g" is formed between a portion of the drain body engaging surface (the bottom-most portion) and the drain body (as defined in the rejection). Examiner regrets any inconvenience if the claim rejection was unclear.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL KENNY whose telephone number is (571)272-9951. The examiner can normally be reached on Mon-Fri. 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571 272 6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633

/D. K./
Examiner, Art Unit 3633